

DATE: October 24, 2007

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In re: )  
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 ----- ) ISCR Case No. 05-16746  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

Leonard Morales, Esq.

**SYNOPSIS**

\_\_\_\_\_ Since 2005, approximately \$16,600 of disputed, delinquent debt has appeared on Applicant's credit reports. In January 2007, after his efforts at resolving the disputes were unsuccessful, he retained an attorney to help him. Since then, nearly half of the disputed delinquencies have been deleted from his credit report, and he is continuing to work with his attorney to resolve the remainder. He has mitigated the security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

On June 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) explaining why it was unable to conclude it is clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on July 10, 2007, denied the allegations, and requested a hearing.

The case was assigned to me on August 9, 2007. On August 13, 2007, DOHA issued a notice of hearing scheduling it for September 11, 2007. During the hearing, I received five government exhibits, three Applicant exhibits, and the testimony of two Applicant witnesses. At Applicant's request, I left the record open through October 2, 2007 to allow him to submit additional documents. He then submitted eight additional exhibits that I incorporated into the record. DOHA received the transcript on September 20, 2007.

### **FINDINGS OF FACT**

Applicant is a 53-year-old married man with two children, ages 16 and eight, and one adult stepdaughter. He earned one year of college credits approximately 20 years ago. From 1976 through his retirement in 2002, he served in the Air Force, the Air National Guard, and the Army National Guard. While in the armed services, he earned several awards including the Non-Commissioned Officer of the Year for his state. (Tr. 63)

Applicant is a heating, ventilation and air conditioning control technician. (Tr. 38) He has worked in this field for nearly 30 years. Since retiring from the armed services, he has been working for a defense contractor who installs ventilation systems in embassies and in military facilities in war zones. (Tr. 41) A former supervisor who testified at the hearing characterized him as an excellent employee. (Tr. 33)

In October 2005, Applicant met with a security clearance investigator who informed him that he had several delinquencies on his credit report. (Tr. 61) Shortly after the meeting, Applicant obtained his credit report. Upon reviewing it, he noticed the delinquencies, but did not recognize any of them. (*Id.*) He then wrote letters to the credit bureaus disputing them. (*Id.*) The credit bureaus did not respond to his correspondence.

In January 2007, Applicant retained an attorney who specializes in credit discrepancies. (*Id.*) Through his attorney, he pulled credit reports for his entire family. After comparing them, he noticed several discrepancies, including addresses where he had never lived, and reports identifying people who shared his first name, but had different surnames. (Tr. 49)

By July 2007, Applicant's attorney had successfully disputed the debts listed in SOR subparagraphs 1.c through 1.d, 1.f through 1.g, and 1.k through 1.j. (Exhibit A) They have been deleted from his credit bureau reports. The attorney is continuing to work toward getting the remainder stricken from his credit record. Also, the attorney is trying to get the erroneous background information removed from his credit bureau reports so the problem does not recur. (Tr. 55)

As of September 10, 2007, Applicant was current on all of his undisputed debts. (*see generally*, Exhibit B) He pays for his stepdaughter's college tuition. Last year, he earned \$144,000.

(Exhibit J) He has been a homeowner for more than ten years. (Tr. 67) In December 2005, he purchased a home. He kept his old home and rents it to tenants. (Tr. 68)

Applicant completed a security clearance application in August 2005. He did not disclose any of the delinquencies, as required. Before meeting with the agent in October 2005, he had never reviewed a credit bureau report, nor had any credit problems. (Tr. 53)

## POLICIES

The Adjudicative Guidelines, as revised December 29, 2005, and implemented by DoD September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest." (*see generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2) In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

### **Financial Considerations**

Under the Financial Considerations guideline, "failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." (AG ¶ 18) Here, the appearance of approximately \$16,600 of delinquent debt on Applicant's credit reports raises the issue of whether Financial Considerations Disqualifying Conditions (FC DC) 19(a) ("inability or unwillingness to satisfy debts"), FC DC 19(c) ("a history of not meeting financial obligations"), and

FC DC 19(e) (“consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis),” apply.

Shortly after discovering these debts were on his credit report, Applicant disputed them with the credit bureau reporting agencies. When this course of action proved unsuccessful, he retained an attorney who systematically began investigating the disputed delinquencies, and discovered critical erroneous information on the credit reports including wrong addresses and names. Currently, approximately half of the disputed delinquencies have been resolved successfully.

I conclude the delinquencies were attributed to Applicant erroneously. None of the disqualifying conditions apply, and Financial Considerations Mitigating Condition (FC MC) 20(e) (“the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue”), applies. Applicant has mitigated the financial considerations security concern.

### **Personal Conduct**

Under the Personal Conduct guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” (AG ¶15) Here, Applicant’s omission of the delinquencies listed on his credit bureau report raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) 16 (a) (“deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination”), applies.

Applicant has never had any problems paying his debts on time. Therefore, he had no reason to review a credit report when he executed it. Moreover, regardless of whether he knew they were on his credit report, they were not his delinquencies. Therefore, he had no responsibility to list them on the security clearance application. PC DC 16(a) does not apply.

### **Criminal Conduct**

“Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” (AG ¶30) Applicant did not falsify his security clearance application, therefore he did not violate 18 U.S.C. § 1001, as alleged in the SOR. There are no criminal conduct security concerns.

### **Whole Person Concept**

Applicant successfully persuaded me that the delinquencies on his credit report were attributed to him erroneously. In reaching this conclusion, I considered his overall financial well-being, the lack of any past financial problems, the organized manner in which he confronted the problem, his credibility, and his character. Evaluating this case in light of the whole person concept, I conclude Applicant has mitigated the security clearance concerns. Clearance is granted.

**FORMAL FINDINGS**

Paragraph 1 – Guideline F:	FOR APPLICANT
Subparagraphs 1.a -1.k:	For Applicant
Paragraph 2 - Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2b:	For Applicant
Paragraph 3 - Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry  
Administrative Judge